Supreme Court, U.S.
FILED
DEC 4 - 2003

No. 02-1632

IN THE
Supreme Court of the United States

RALPH HOWARD BLAKELY, JR.,
Petitioner,

v.

STATE OF WASHINGTON,
Respondent.

On Writ of Certiorari to the
Washington Court of Appeals, Division III

JOINT APPENDIX

JOHN D. KNODELL
PROSECUTING ATTORNEY
GRANT COUNTY, WA.
Counsel of Record
TERESA CHEN
P.O. Box 37
Ephrata, WA 98823
(509) 754-2011

JEFFREY L. FISHER
Counsel of Record
DAVIS WRIGHT TREMAINE LLP
2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101-1688
(206) 622-3150

Petition for Certiorari Filed May 5, 2003
Certiorari Granted October 20, 2003

TABLE OF CONTENTS

Relevant Docket Entries From the Courts Below 1

Decision of the Washington Court of Appeals..... 2

Superior Court's Judgment and Sentence 24

Superior Court's Findings of Fact and Conclusions of Law re: Exceptional Sentence 40

Oral Ruling of the Superior Court Denying Petitioner's *Apprendi* Motion 51

Order of the Washington Supreme Court Order Denying Review..... 60

Statement of Defendant on Plea of Guilty to a Felony..... 61

Second Amended Information..... 75

RELEVANT DOCKET ENTRIES FROM THE COURTS BELOW

1. Superior Court of Washington for Grant County

a. 10/27/98	Information filed
b. 7/12/00	Amended Information filed
c. 7/18/00	Second Amended Information filed
d. 7/18/00	Guilty plea entered
e. 7/31/00	Motion to withdraw guilty plea denied
f. 7/31/00	Hearing regarding sentencing
g. 7/31/00	Sentencing continued under RCW 9.94A.370
h. 8/28/00	Notice of Appeal filed
i. 10/4/00	Oral ruling denying Petitioner's *Apprendi* motion
j. 10/4/00	Oral ruling denying second motion to withdraw guilty plea
k. 10/4-6/00	Evidentiary hearing on sentencing
l. 11/13/00	Judgment and Sentence
m. 11/13/00	Findings of Fact and Conclusions of Law Regarding Exceptional Sentence

2. Washington Court of Appeals, Division III

a. 4/16/02	Oral Argument
b. 5/23/02	Decision affirming conviction and sentence

3. Washington Supreme Court

a. 6/24/02	Petition for Review filed
b. 2/4/03	Petition for Review denied

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	No. 19545-7-III
	)	
Respondent,	)	
	)	Division Three
v.	)	Panel Six
	)	
HOWARD RALPH BLAKELY,	)	PUBLISHED OPINION
	)	
Appellant.	)	Filed May 23, 2002

SCHULTHEIS, J. -- Howard Ralph Blakely pleaded guilty to one count of second degree kidnapping and one count of second degree assault. Consistent with the plea agreement, the State recommended the high end of the standard range. After a sentencing evidentiary hearing, where the State presented testimony from the victims and mental health professionals, the trial court imposed an exceptional sentence upward. Mr. Blakely now appeals, contending the State violated the plea agreement by advocating for an exceptional sentence. He also challenges the constitutionality of the sentence and the sentencing hearing. Pro se, he claims he had ineffective assistance of counsel and alleges various acts of misconduct by the State. Finding no error, we affirm.

FACTS

Mr. Blakely and Yolanda Blakely were married in 1973. They raised three children: two daughters and their youngest son, Ralphy. The family acquired considerable real property during the marriage, including a home, ranch, and development property in Montana; a home and orchard in Grant County; a lake home; and rental properties. In order to

protect this property from creditors and tax liability, they created a trust known as the Blakely Farms Trust.

In 1995, Ms. Blakely moved to Spokane from Montana, filed for divorce, and obtained a restraining order against Mr. Blakely. One year later, the trustee for the Blakely Farms Trust filed a petition for a declaration of the validity of the trust and for an accounting. In December 1997, the Spokane divorce court authorized Ms. Blakely to move into the Grant County home and to operate the orchard. Her son Ralphy joined her there in June 1998.

On the afternoon of October 26, 1998, about two weeks before the trust litigation was set to begin, Mr. Blakely surprised Ms. Blakely as she walked back from her mailbox. He pushed her to the ground, wrapped duct tape around her mouth and head, and taped her wrists together. Apparently very angry, he told Ms. Blakely he wanted her to dismiss the dissolution and trust proceedings. Noting that O.J. Simpson had gotten away with what he did, Mr. Blakely warned his wife to cooperate or he would kill her and Ralphy. He told her he had many guns, ammunition, and several knives. He then forced her to climb into his pickup canopy, where he locked her in a coffin-like plywood box that he had constructed. The box was about the same width and length as Ms. Blakely's body and had air holes drilled into each end. Ms. Blakely heard her husband loading items from the house into the truck. On several occasions, he opened the lid of the box, pressed a knife blade to Ms. Blakely's neck or nose, and demanded to know where various items could be found. As night fell and it became cold, Mr. Blakely put a quilt over his wife in the box.

Ralphy, age 13, arrived home from football practice after dark. His father met him in the driveway, told him his mother was in great danger, and told him not to cause any trouble. They walked to the pickup, where Ralphy heard his mother yelling from the box. Mr. Blakely ordered Ralphy to

drive his mother's car and warned him that if he "tried anything," Mr. Blakely would shoot the box with a shotgun. Clerk's Papers (CP) at 626.

Mr. Blakely drove the pickup out of the orchard and headed east, with Ralphy following in his mother's car. Eventually they stopped at a truck stop on the outskirts of Moses Lake for gas. When Ralphy and his father entered the truck stop to pay, Ralphy shouted, "Call 9-1-1! Help us! He kidnapped us! He has my mom in a box!" CP at 627. Mr. Blakely tried to drag Ralphy to the car, but truckers shouted to him to leave the boy alone.

He released Ralphy, ran to the pickup, and took off. Ralphy jumped on the pickup bumper and tried to release his mother from the box, but was knocked off when Mr. Blakely accelerated. Ralphy was left behind at the truck stop.

During the subsequent trip to Montana, Mr. Blakely removed the tape from his wife's head and let her sit in the front seat so she could tell any police who stopped them that she was accompanying him of her own free will. He was angry because "Ralphy ruined everything!" CP at 627. On occasion, Mr. Blakely forced Ms. Blakely back into the box. In all, she was locked in the box for over four hours.

They eventually arrived at the house of Mary Gillespie, who lived close to their Montana home. Mr. Blakely let his wife enter Ms. Gillespie's house while he called their older daughter and demanded that she stop the divorce and trust litigation. He also called a stockbroker, received stock quotations, and gave the broker sell orders. Meanwhile, Ms. Blakely and Ms. Gillespie surreptitiously planned to call for help. When Mr. Blakely sent Ms. Gillespie on an errand to a nearby house, she called the police. Officers soon arrived and Mr. Blakely sent his wife out to tell them that she had

come to Montana voluntarily. Instead, she reported that she had been kidnapped, and he was arrested without incident.

Mr. Blakely was charged in federal court with two counts of kidnapping. These charges were later dismissed and the State filed two charges of first degree kidnapping, each involving domestic violence, in October 1998. He pleaded not guilty, with a defense of insanity or diminished capacity.

Mr. Blakely has been diagnosed at various times since 1972 as suffering from schizophrenia. The trial court in the Blakely Farms Trust litigation held a hearing in February 1999 to determine whether the court should appoint a guardian ad litem to represent Mr. Blakely's interests in the trust and dissolution actions. Based on his psychiatric history and a psychologist's recent conclusion that Mr. Blakely suffered "clear mental deficiencies," Def.'s Ex. 2, the civil court appointed a guardian ad litem in early March 1999.

Within days, the State in the criminal action obtained an order for an evaluation at Eastern State Hospital of Mr. Blakely's competency. After reviewing Mr. Blakely's 27-year psychiatric history as well as the results of his current examination, evaluators Dr. Vern Cressey and Dr. Timm Fredrickson concluded that he had high average intelligence, had never been a paranoid schizophrenic, and suffered instead from a severe personality disorder with schizotypal and narcissistic components. Noting his multiple legal difficulties over the years, their report also surmised that Mr. Blakely only sought psychiatric treatment when he was "embroiled in legal issues." CP at 70. On the basis of this evaluation, the criminal trial court entered an order of competency in May 1999.

Because defense counsel continued to have difficulty communicating with Mr. Blakely, the trial court ordered another evaluation in September 1999 to determine whether Mr. Blakely could assist counsel and appreciate the import of

the criminal proceedings. The report from this round of evaluations stated that Mr. Blakely began the stay at Eastern with "elective mutism" and "struggl[ed] to find something wrong with himself physically." CP at 291. In the opinion of the evaluators, he was well aware of the court proceedings--including the options and consequences of various pleas--and he had the capacity to understand and assist in his own defense. Despite the evaluation results, defense counsel demanded a jury trial on the issue of Mr. Blakely's competency to stand trial. Finding that RCW 10.77.090 authorizes a pretrial jury determination of competency, the trial court granted the motion.[1]

The criminal competency trial was held in April 2000. Mr. Blakely's counsel sought to introduce the trust court's order appointing the guardian ad litem. This order included a finding that Mr. Blakely "is not competent at this time [March 1999] to comprehend with understanding and intelligence the significance of the entire legal proceedings and their effect on and relationship to his best interests." Def.'s Ex. 1, at 2. Although the criminal trial court found that the civil court's order was not really an adjudication of incompetence, it decided to allow admission of the order at the competency hearing. Later, when defense counsel objected to the trial court's refusal to instruct the jury that the civil court's order raised a rebuttable presumption of incompetence, the trial court ruled as a matter of law that the order appointing the guardian ad litem did not constitute an adjudication of incompetence. The jury found that Mr. Blakely was competent to stand trial on the criminal charges.

---

[1] RCW 10.77.090(1) provides that the trial court may order a defendant who is suspected to be incompetent to undergo an evaluation for up to 90 days. After that time, "if the jury or court, as the case may be, finds that the defendant is incompetent, the charges shall be dismissed without prejudice." Former RCW 10.77.090(3) (1989) (relating to defendants charged with felonies).

Trial was set for July 2000. On July 18, the court conducted a hearing on a plea agreement. The State offered to amend the charges to one count of second degree domestic violence kidnapping with a deadly weapon enhancement (RCW 9A.40.030(l), 10.99.020, former 9.94A.125 (1983)) and one count of second degree domestic violence assault (RCW 9A.36.021(l)(c), 10.99.020). In exchange for the amended charges and a recommendation for a sentence in the high end of the standard range, Mr. Blakely agreed to an *Alford* plea of guilty.[2] Although Mr. Blakely complained that he could not think clearly due to the intolerable conditions in his jail cell, the trial court eventually determined that Mr. Blakely understood the charges and the agreement.

At the sentencing hearing two weeks later, Mr. Blakely attempted to withdraw the guilty plea, claiming he was pressured by his doctors and lawyers. Finding that it was not credible that Mr. Blakely was under duress or was misled, the trial court denied the motion to withdraw. The State then told the court the standard range for the kidnapping charge with the deadly weapon enhancement was 49 to 53 months and recommended the high end of that range to run concurrently with a sentence of 12 to 14 months for the assault. Before pronouncing sentence, the trial court asked for Mr. Blakely's comments and asked Ms. Blakely to describe her ordeal during the kidnapping. During her testimony, defense counsel protested that she was giving new information without being under oath. In response, the trial court told her to leave out extraneous details. Ultimately, the trial court rejected the State's recommendation for a standard range sentence and imposed an exceptional sentence of 90 months for the kidnapping, citing the aggravating factors of deliberate cruelty and commission of domestic violence in the presence of a minor child.

---

[2] See *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970) (a defendant may plead guilty while disputing the facts alleged by the prosecution).

In August 2000, Mr. Blakely objected to the exceptional sentence and the trial court continued the matter for an evidentiary hearing. The court asked the State to subpoena Ms. Blakely and other witnesses and admitted it should have held a hearing with witnesses under oath and subject to cross-examination before imposing the exceptional sentence. Before the sentencing hearing, Mr. Blakely again moved to withdraw his guilty plea, arguing that the State violated the plea agreement by advocating for an exceptional sentence. The trial court found that the State's sentencing brief did not suggest what the court ought to do, and denied the motion.

At the sentencing hearing held in October 2000, Ms. Blakely, Ralphy, various mental health experts, and a police officer were examined and cross-examined. After hearing a statement from Mr. Blakely, the trial court again imposed an exceptional sentence of 90 months on the kidnapping charge, to run concurrently with a standard sentence of 14 months on the assault charge. Mr. Blakely's motion to vacate the sentence was denied in January 2001 and this appeal followed.

PRESUMPTION OF INCOMPETENCE

Mr. Blakely first challenges the jury instructions given in the competency trial. He contends the trial court erred in refusing to instruct the jury that a defendant is presumed incompetent to stand trial if there is proof of a mental illness adjudication.

Jury instructions are sufficient if they are supported by substantial evidence, allow the parties to argue their theories of the case, and properly inform the jury of the applicable law. *State v. Irons*, 101 Wn. App. 544, 549, 4 P.3d 174 (2000). Mr. Blakely argued at the competency trial that the civil court's conclusion that he lacked competence to represent himself in

the trust and dissolution proceedings raised a presumption of incompetence to stand trial on the criminal charges.

Although the trial court allowed admission of the civil court's findings, it held as a matter of law that the civil order did not constitute an adjudication of incompetence. On that basis, the trial court declined to instruct the jury that a mental illness adjudication rebutted the presumption of competence. The trial court properly found that neither the evidence nor the law supported Mr. Blakely's proposed instruction.

The test for competency to stand trial is whether the defendant is able to understand the proceedings against him or her and can assist in his or her defense. *In re Pers. Restraint of Fleming*, 142 Wn.2d 853, 862, 16 P.3d 610 (2001). A rebuttable presumption of mental incompetency is raised by proof of a mental illness adjudication. *State v. Smith*, 97 Wn.2d 801, 803, 650 P.2d 201 (1982); *State v. Bonner*, 53 Wn.2d 575, 587-88, 335 P.2d 462 (1959). On the other hand, "[i]t is the fact of mental incompetency, and not the adjudication of mental illness, that determines one's inability to form an intent to commit an offense, or his inability, after an offense has been committed, to aid in his defense." *Id.* at 586 (emphasis omitted).

The civil court deciding Mr. Blakely's trust and dissolution cases found that the weight of past and current psychological evaluations supported a finding that Mr. Blakely was not competent to understand the nature and complexity of the trust issues. Consequently, a guardian ad litem was appointed to represent his interests in those cases only. Mr. Blakely was not, however, adjudged to have a mental illness or to be generally incompetent. As the civil court stated in its order appointing the guardian ad litem, "The court's findings and conclusions in this case shall have no precedential or preclusive effect on any other civil or criminal proceeding involving Ralph H. Blakely, Jr. and the matters at issue

therein." Def.'s Ex. 1, at 2. Because the civil court's order did not presume to apply beyond the time frame and issues of the trust and dissolution proceedings, it did not constitute an actual adjudication of mental illness. The order served as relevant evidence of Mr. Blakely's ability to understand the criminal proceedings and to assist in his defense, but it did not give rise to a presumption that Mr. Blakely was incompetent. Consequently, the order did not support an instruction declaring that proof of a prior mental illness adjudication raised a presumption of incompetence. *Irons*, 101 Wn. App. at 549.

VIOLATION OF THE PLEA AGREEMENT

Mr. Blakely's next contention is that the prosecutor violated the plea agreement by advocating for an exceptional sentence upward. He argues that the prosecutor effectively undercut the recommendation of a standard sentence by discussing in the sentencing brief recent decisions on the factual bases for exceptional sentences and by eliciting testimony at the sentencing hearing to support aggravating factors.

A plea bargain is a contract between the criminal defendant and the prosecutor. *State v. Talley*, 134 Wn.2d 176, 182, 949 P.2d 358 (1998); *State v. Sledge*, 133 Wn.2d 828, 838-39 n.6, 947 P.2d 1199 (1997). Due process requires the prosecutor to adhere to the terms of the contract by recommending the agreed-upon sentence. *Talley*, 134 Wn.2d at 183; *Sledge*, 133 Wn.2d at 839. The prosecutor's conduct at the sentencing hearing must not undercut the plea bargain:

> Although the recommendation need not be made enthusiastically, the prosecutor is obliged to act in good faith, participate in the sentencing proceedings, answer the court's questions candidly in accordance with RPC 3.3 and, consistent with RCW 9.94A.460, not hold back relevant information regarding the plea agreement.[3]

Talley, 134 Wn.2d at 183. Mere participation in an evidentiary hearing convened by the court to determine whether evidence supports an exceptional sentence will not undercut the State's agreed-upon sentence recommendation. *Id.* at 185-86.

Mr. Blakely cites *In re Pers. Restraint of Palodichuk*, 22 Wn. App. 107, 589 P.2d 269 (1978) for the principle that less than wholehearted support for the terms of the plea bargain can constitute a breach. In *Palodichuk*, the prosecutor recommended a suspended sentence and probation, but then told the court he had obtained new information that gave him "second thoughts about that recommendation." *Id.* at 109 (emphasis omitted). The prosecutor's reservations did more than express less than wholehearted support for the terms of the plea bargain, they seriously undercut the agreement. *See Talley*, 134 Wn.2d at 184 (discussing *Palodichuk*).

Similarly, the prosecutor in *Sledge* recommended a standard range sentence for a juvenile offense, but then extensively examined the probation counselor concerning her reasons for recommending an exceptional sentence, presented the testimony of a parole officer who reported problems with the juvenile, and gave a detailed summary of the aggravating

---

[3] RPC 3.3 states:

"(a) A lawyer shall not knowingly:

"(1) Make a false statement of material fact or law to a tribunal."

"A prosecutor, like any other attorney, has a duty of candor toward the tribunal which precludes it from making a false statement of material fact or law to such tribunal." [*State v.*] *Coppin*, 57 Wn. App. [866,] 874 n.4[, 791 P.2d 228 (1990)].

RCW 9.94A.460 states in part:

"The prosecutor shall not agree to withhold relevant information from the court concerning the plea agreement."

factors to the court. The Supreme Court found that the prosecutor's fervor in setting out and emphasizing evidence supporting the aggravating factors undercut the plea bargain. *Sledge*, 133 Wn.2d at 842-43.

As the Supreme Court stated in *Talley*, 134 Wn.2d at 183, the prosecutor need not make the agreed sentencing recommendation enthusiastically, but must not appear to advocate for an exceptional sentence. The State's mere participation in an evidentiary hearing-presenting relevant evidence to the court and responding to its inquiries-will not constitute a breach of the plea bargain, while advocacy for an exceptional sentence by placing emphasis on aggravating factors will. *See Talley*, 134 Wn.2d at 186; *Sledge*, 133 Wn.2d at 843.

Here, the prosecutor consistently told the court he recommended the high end of the standard range. At the July 2000 sentencing hearing, the court found two aggravating factors-deliberate cruelty and domestic violence in the presence of the minor child-and imposed an exceptional sentence. When the trial court later decided it needed to conduct an evidentiary hearing to consider the evidence supporting an exceptional sentence, the prosecutor responded that "[w]e of course are not proponents of an exceptional sentence in these proceedings," but asked if he should subpoena witnesses. Report of Proceedings (RP) at 563. The court asked him to subpoena Ms. Blakely and any witnesses who observed Ralphy during the kidnapping incident. However, the court added, the evidentiary hearing was probably an "exercise in futility," because there was no dispute that Mr. Blakely put his wife in an apple wood box and kept her there in the presence of Ralphy. RP at 564. Apparently the trial court intended to impose an exceptional sentence based on the record, regardless of the State's recommendation.

Most of the evidence challenged by Mr. Blakely was presented by the State in response to assertions by the defense. For instance, before the evidentiary hearing, the State filed a response brief to Mr. Blakely's motion for a standard range sentence. Mr. Blakely had argued that *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000) prohibited the trial court from imposing an exceptional sentence based on facts that had not been established by a jury beyond a reasonable doubt. The State's response brief examined the precedential effect of *Apprendi* and concluded that "[t]he court is not required to provide the defendant with a jury trial on the issue of whether an exceptional sentence will be imposed." CP at 578. Defense counsel moved to withdraw the guilty plea on the basis that the State's response brief violated the plea agreement by advocating for an exceptional sentence. In response, the prosecutor stated, "I hope that I have never at any point done anything that the court has interpreted as advocating an exceptional sentence in this case, because I did have an agreement with counsel which prohibited me from doing that.' RP at 585. In denying the motion to withdraw the guilty plea, the court found that the State's response brief did not advocate a particular sentence and did not give "even the narrowest suggestion of what the court ought to do." RP at 586.

As would be expected, the prosecutor's involvement in the evidentiary hearing was problematical. He was required to conduct examinations and cross-examinations of the witnesses in a manner that would present an accurate record to the court, while at the same time refraining from advocacy for the exceptional sentence he knew the court intended to impose. *See Talley*, 134 Wn.2d at 183. During the examination of Ms. Blakely, the prosecutor asked if she was afraid of Mr. Blakely during the kidnapping. She answered yes. It was the court, not the prosecutor, who asked a psychologist defense witness if Mr. Blakely could deliberately act in a cruel way. The witness answered that he could not make an opinion. Later, when the State presented the testimony of two mental

health witnesses, the prosecutor anticipated the court's question and asked each of them if Mr. Blakely had the capacity to be cruel. Both answered that he did.

Following this testimony, the court asked the prosecutor if he wished to be heard regarding the sentence recommendation. He responded, "Judge, [I] don't want to be heard right now. My understanding was that we had an agreed recommendation for a high end sentence, and that's what I continue to recommend to the court. Unless counsel wants to deviate from that recommendation, I don't have anything to say." RP at 1038.

Compared to the "second thoughts" expressed in *Palodichuk*, 22 Wn. App. at 109, and the detailed summary of aggravating factors given by the prosecutor in *Sledge*, 133 Wn.2d at 843, the prosecutor's conduct here does not rise to advocacy for an exceptional sentence. Unlike in *Sledge*, where the State insisted upon the evidentiary hearing with witnesses, here defense counsel moved for the hearing. As an officer of the court, the prosecutor was obliged to participate in the hearing, to call witnesses that would be helpful to the court, and to anticipate the questions the court wished to ask. *See Sledge*, 133 Wn.2d at 840. The State walks a thin line between, on the one hand, maintaining its duty to present relevant evidence and respond to the sentencing court's inquiries, and on the other hand, meeting its equally important obligation to uphold the plea agreement. *Talley*, 134 Wn.2d at 187. The important point is that the State must not in the process contradict its recommendation for a standard range sentence. *Sledge*, 133 Wn.2d at 840.

On balance, considering the sentencing court's conclusion from the start that undisputed facts in the record supported an exceptional sentence based on domestic violence and deliberate cruelty, the prosecutor's conduct in the evidentiary hearing did not undercut his insistence that he

recommended a standard range sentence. Addressing this issue, the trial court noted that it tried to pay attention to the prosecutor's conduct in regard to the difficult position in which the State was put by having recommended to the court a sentence within the standard range, having the court indicate that an exceptional sentence may be appropriate, having the court indicate those subjects that would need to be presented at a sentencing hearing, and then having the laboring oar in presenting the testimonial matters to the court. RP at 1056. The sentencing court concluded that the prosecutor confined himself to the matters that concerned the court and did not advocate for an exceptional sentence. The record supports that conclusion. Consequently, the State did not breach the plea agreement.

EXCEPTIONAL SENTENCE

Mr. Blakely next challenges his exceptional sentence. The trial court found two aggravating factors: (1) Mr. Blakely's conduct during the kidnapping manifested deliberate cruelty to his wife, former RCW 9.94A.390(2)(a) (1997); and (2) the offense involved domestic violence plus deliberate cruelty and commission within sight or sound of the victim's minor child, former RCW 9.94A.390(2)(h)(ii), (iii) (1997). Mr. Blakely contends the aggravating factors violate the real facts doctrine, former RCW 9.94A.370(2) (1996). He also contends the sentencing court violated the holding in *Apprendi*, 530 U.S. at 490, that requires a jury determination of the facts used to support an exceptional sentence outside the maximum range. Finally, he asserts the sentencing hearings violated due process by preventing defense counsel from cross-examining Ms. Blakely and by denying him the right to allocution.

I. The Real Facts Doctrine.

Under the Sentencing Reform Act of 1981, a trial court must impose a sentence within the standard range for the

offense unless the court finds substantial and compelling reasons justifying an exceptional sentence. Former RCW 9.94A.120(1), (2) (1998); *State v. Ferguson*, 142 Wn.2d 631, 64344, 15 P.3d 1271 (2001). Several nonexclusive mitigating and aggravating factors are provided in former RCW 9.94A.390 (1997), including the mitigating circumstance of diminished capacity (former RCW 9.94A.390(1)(e) (1997)) and the aggravating circumstances mentioned above. In reviewing an exceptional sentence, this court asks three questions: (1) Are the reasons given by the sentencing court supported by the record, using the clearly erroneous standard of review? (2) Do the reasons justify departure from the standard range as a matter of law? (3) Is the sentence clearly too excessive or too lenient, using the abuse of discretion standard of review? *Ferguson*, 142 Wn.2d at 646.

Mr. Blakely contends the trial court erred as a matter of law in considering facts that established a more serious crime than that to which he pleaded guilty. The so-called real facts doctrine of former RCW 9.94A.370(2) (1996) provides that the sentencing court generally may not use facts that establish a more serious crime or additional crimes as the basis for a sentence outside the presumptive range. In exchange for dismissing the charge of first degree kidnapping, the State agreed to allow Mr. Blakely to plead guilty to second degree kidnapping. As charged in the original information, the first degree kidnapping count alleged intentional abduction of a person with the intent to inflict extreme mental distress. RCW 9A.40.020(1)(d). Second degree kidnapping does not include the same intent element. RCW 9A.40.030. Mr. Blakely contends the finding of deliberate cruelty constitutes the same element as intent to inflict extreme mental distress, in effect allowing the court to sentence him for the more serious crime.

Deliberate cruelty has been defined as "gratuitous violence or other conduct which inflicts physical, psychological, or emotional pain as an end in itself." *State v.*

Scott, 72 Wn. App. 207, 214, 866 P.2d 1258 (1993), *aff'd sub nom. State v. Ritchee*, 126 Wn.2d 388, 894 P.2d 1308 (1995), quoted in *State v. Copeland*, 130 Wn.2d 244, 296, 922 P.2d 1304 (1996). In *Ferguson*, 142 Wn.2d at 648-49, the Supreme Court held that deliberate cruelty could not be used to elevate a sentence for second degree assault because an element of the charge is the intent to do bodily harm. The court found that the defendant's charged offense, intent to inflict harm by exposing another to the human immunodeficiency virus (HIV), implicitly contains elements that constitute deliberate cruelty. *Id.* at 651.

Citing *Ferguson*, Mr. Blakely contends deliberate cruelty is implicitly the same as the infliction of extreme mental distress element of first degree kidnapping, and therefore violates the real facts doctrine. But gratuitous violence with the intent to inflict emotional pain (deliberate cruelty, *Scott*, 72 Wn. App. at 214) is not the same as the intent to inflict extreme mental distress. Even under the precedent of *Ferguson*, therefore, the real facts doctrine likely does not preclude deliberate cruelty as an aggravating factor in an exceptional sentence for second degree kidnapping. However, recognizing that *Ferguson* may direct a different conclusion, we decline to affirm the exceptional sentence on the basis of deliberate cruelty under former RCW 9.94A.390(2)(a) (1997). Instead, we find that the domestic violence aggravating factors alone support the exceptional sentence.

We begin by noting that the real facts doctrine does not apply to the domestic violence aggravating factors of former RCW 9.94A.390(2)(h) (1997). Former RCW 9.94A.370(2) (1996). The real facts statute specifically allows the court to consider acts of domestic violence that involve deliberate cruelty or intimidation of the victim as well as acts of domestic violence committed in the presence of the victim's or offender's minor child. Former RCW 9.94A.370(2) (1996); former RCW 9.94A.390(2)(h)(ii), (iii) (1997). Because the

trial court found that these aggravating circumstances also supported a departure from the standard range, the exceptional sentence is justified as a matter of law.[4] *State v. Cardenas*, 129 Wn.2d 1, 12, 914 P.2d 57 (1996) (an appellate court may uphold an exceptional sentence if satisfied that the trial court would have imposed the same sentence without the prohibited aggravating factor).

Mr. Blakely additionally contends that the sentence of 90 months is excessive in light of the standard range sentence of 13 to 17 months for second degree kidnapping. Former RCW 9.94A.310 (1998); former RCW 9.94A.320 (1998). He fails to take into consideration the firearm enhancement of 36 months, which makes the high end of the standard range for this crime 53 months. Former RCW 9.94A.310(3)(b) (1998). We will not disturb the trial court's discretion unless we find that no reasonable judge would have imposed the same sentence. *Cardenas*, 129 Wn.2d at 13. Here, the trial court stated that "[t]here is a part of the court's thinking that suggests that 90 months as an exceptional sentence is an insufficient judicial response to this conduct." RP at 1053. Given the circumstances of the crime, we cannot say that no reasonable judge would have made the same decision. *Cardenas*, 129 Wn.2d at 13.

---

[4] At oral argument, the State admitted that the trial court was not sure if the aggravating factor of domestic violence in the presence of the minor child, standing alone, would support an exceptional sentence. The record indicates, however, that the trial court considered deliberate cruelty and domestic violence with deliberate cruelty sufficient to support the sentence. Whether or not deliberate cruelty under former RCW 9.94A.390(2)(a) (1997) could be used to elevate the sentence for second degree kidnapping, the alternate basis of domestic violence with deliberate cruelty supports the exceptional sentence here. *State v. Cardenas*, 129 Wn.2d 1, 12, 914 P.2d 57 (1996).

II. Application of *Apprendi*.

Mr. Blakely contends the United States Supreme Court decision in *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000) provides that the factual basis for an exceptional sentence upward must be submitted to a jury and proved beyond a reasonable doubt. However, recently the Washington Supreme Court in *State v. Gore*, 143 Wn.2d 288, 314, 21 P.3d 262 (2001) held that *Apprendi* does not apply to factual determinations that support reasons for exceptional sentences upward. *Gore* held that Washington's statutory scheme permits a judge to impose an exceptional sentence within the maximum range determined by the Legislature. *Id.* at 313-14. Because the statutory and nonstatutory aggravating factors neither increase the maximum sentence nor define separate offenses calling for separate penalties, the *Apprendi* rule is not triggered. *Id.* at 314. Consequently, the facts supporting the exceptional sentence here did not have to be submitted to a jury or proved beyond a reasonable doubt. *Id.* at 315; *see also State v. Hopkins*, 109 Wn. App. 558, 569, 36 P.3d 1080 (2001).

III. Due Process and the Sentencing Hearing.

During the first sentencing hearing, defense counsel did not cross-examine Ms. Blakely during her victim's statement. He now contends he was entitled by due process to confront the witnesses at the sentencing hearing and further contends he was not granted a formal opportunity for allocution.

The Sixth Amendment confrontation clause provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." Generally, due process is satisfied in the context of a sentencing hearing as long as the defendant has an opportunity to rebut the evidence presented. *State v. Strauss*, 119 Wn.2d 401, 418-19, 832 P.2d 78 (1992). While the effect of the

confrontation clause on sentencing hearings has not yet been established in Washington, *id.* at 414-15, we need not reach this issue here because Mr. Blakely was given the opportunity to cross-examine Ms. Blakely and all the other witnesses at the evidentiary hearing. Ms. Blakely's testimony in the first sentencing hearing constituted a victim impact statement rather than evidence to support an aggravating factor. *See* former RCW 9.94A.110 (1998). When she testified as a witness at the subsequent evidentiary hearing, however, defense counsel cross-examined her as extensively as he did all the other witnesses.

As for Mr. Blakely's right of allocution, he seems to argue that he was denied the opportunity to give a formal statement before sentence was pronounced. A defendant's right of allocution is derived from state statutes and is not constitutional in nature. *In re Pers. Restraint of Echeverria*, 141 Wn.2d 323, 335, 6 P.3d 573 (2000). As with the victim impact statement, the offender is provided an opportunity to address the sentencing court before sentence is imposed. Former RCW 9.94A.110 (1998); *Echeverria*, 141 Wn.2d at 335. The statute does not require that the offender's statement be made immediately before imposition of the sentence and does not require a formal request from the court. *Id.* at 336.

In this case, the trial court asked Mr. Blakely at the first sentencing hearing and at the evidentiary hearing if there was anything he wanted to say. On both occasions Mr. Blakely took the opportunity to explain to the court his version of the events and the motivations of the witnesses against him. Although the trial court did not specifically ask Mr. Blakely if he had anything to say in mitigation of the sentence-the better course to scrupulously comply with former RCW 9.94A.110 (1998), according to *Echeverria*, 141 Wn.2d at 336-37-clearly Mr. Blakely understood that he was asked whether he had information that supported a lower sentence.

PRO SE ISSUES

Mr. Blakely raises additional issues pro se, including contentions that the State withheld evidence, that the weapon enhancement was added as retaliation for Mr. Blakely's complaints against jail conditions, and that his counsel was ineffective.

According to the pro se brief, the State failed to produce the registration on the truck used in the kidnapping and withheld evidence that proved Ms. Blakely used poison to control his actions during the kidnapping. Mr. Blakely also alleges that the prosecutor withheld a copy of a 1995 social security disability form that shows his wife attempted to cheat the government by forging Mr. Blakely's name to a false claim. Besides the fact that Mr. Blakely fails to show how the alleged withholding of this evidence affected his guilty plea, he also fails to show any reference in the record to the purported evidence. Matters mentioned in the brief but not included in the record cannot be considered on appeal. *State v. Stockton*, 97 Wn.2d 528, 530, 647 P.2d 21 (1982), cited in *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995).

Similarly, the record shows no evidence to support an inference that the State added the deadly weapon enhancement in retaliation for Mr. Blakely's threat to sue Grant County for intolerable jail conditions. In April 2000, Mr. Blakely filed "A Claim for Discrimination and Negligence and Punishment" that alleged he had been forced to live in isolation with bacterial and viral infections, had been denied an operation that would have fixed his "brain functions," and had been mistreated by inmates and staff at the jail. CP at 399-400. He requested a settlement of $5 million on the claim. Beyond the accusations in the claim, nothing in the record supports the validity of these assertions. The amended information adding the deadly weapon enhancement to the two first degree kidnapping charges was filed in July 2000. Although the amendment was

made after Mr. Blakely's discrimination claim, nothing in the record supports an inference that it was made in retaliation for Mr. Blakely's threat to sue.

Insufficient record also defeats Mr. Blakely's contention that he received ineffective assistance of counsel. To prove ineffective counsel, a defendant must show that counsel's representation fell below an objective standard of reasonableness and that counsel's representation prejudiced the defendant. *McFarland*, 127 Wn.2d at 334-35. Attorney competency is determined based only on the record below. *Id.* at 335. We engage a strong presumption that counsel was effective. *Id.* Mr. Blakely contends his counsel was deficient in failing to attend his court-ordered mental health evaluations, in pressuring him to enter into the guilty plea without explaining the possible sentence, and in failing to gather the necessary evidence to impeach his wife's testimony.

Defendants in noncapital cases generally do not have a right to have counsel present during psychological examinations. *State v. Decker*, 68 Wn. App. 246, 251, 842 P.2d 500 (1992). Counsel may attend, but strictly as an observer, not as an active participant. *State v. Nuss*, 52 Wn. App. 735, 741, 763 P.2d 1249 (1988). When a defense of diminished capacity is raised, the defendant waives his privilege against self-incrimination. *Id.* at 742. Nothing in the record indicates that Mr. Blakely ever requested the presence of counsel at his mental health evaluations or that the presence of counsel would have been of any benefit to his case.

The record also fails to show that defense counsel pressured Mr. Blakely to accept the terms of the plea agreement. A guilty plea must be entered knowingly, voluntarily, and intelligently. *State v. Ross*, 129 Wn.2d 279, 284, 916 P.2d 405 (1996). The defendant must understand the plea's direct sentencing consequences. *Id.* A claim that the defendant was coerced to plead guilty must be supported with

more than self-serving allegations. *State v. Osborne*, 102 Wn.2d 87, 97, 684 P.2d 683 (1984).

During the hearing on the plea agreement held in July 2000, the court asked Mr. Blakely if he understood the terms of the agreement, the sentence range, and the fact that the trial court was not bound by the terms of the agreement to impose the sentence recommended by the State. Mr. Blakely first asked to die and claimed his mind was not clear due to lack of sleep, but eventually agreed that he understood. He went over the plea agreement with the court and with trial counsel before signing. Only later did he claim his doctors and lawyers pressured him into signing the agreement. Nothing in the record beyond his bare assertion of fact supports his allegations that the plea was involuntary.

Finally, the record does not support Mr. Blakely's assertion that defense counsel failed to investigate evidence that Ms. Blakely orchestrated the kidnapping by poisoning her husband and controlling his mind. As with the other claims of ineffective assistance of counsel, our review on direct appeal is limited to matters within the trial record. *McFarland*, 127 Wn.2d at 335. With support for Mr. Blakely's claims nonexistent in this record, we are compelled to find that defense counsel's representation was effective.

Affirmed.

/s/
Schultheis, J.

WE CONCUR:

/s/
Sweeney, J.

/s/
Kurtz, J.

SUPERIOR COURT OF WASHINGTON
FOR GRANT COUNTY

STATE OF WASHINGTON,)
) No. 98-1-00610-5
Plaintiff,
) JUDGMENT AND
vs.) SENTENCE (JS)
)
HOWARD RALPH BLAKELY,) [√] Prison
)
Defendant.) [ ] Clerk's action
SID# WA15275162; DOB 6-3-36) required, firearms
AGENCY: GCSO 98-GS12773) rights revoked 5.6

I. HEARING

1.1 A sentencing hearing was held present were:
Defendant: HOWARD RALPH BLAKELY
Defendant's Lawyer: Doug Phelps
(Deputy) Prosecuting Attorney: John Knodell

II. FINDINGS

There being no reason why judgment should not be pronounced, the Court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on July 17, 2000 by Plea

COUNT	CRIME with RCW	CRIME DATE
1	KIDNAPPING IN THE SECOND DEGREE, DOMESTIC VIOLENCE, RCW 9A.40.030(1), 10.99.020 & RCW 9.94A.125 (CRIME CODE 00655)	October 26, 1998
2	ASSAULT IN THE SECOND DEGREE, DOMESTIC VIOLENCE, RCW 9A.36.021(1)(c) & 10.99.020 (CRIME CODE 01035)	October 26, 1998

as charged in the Information

[X] A special verdict finding for use of **firearm** was returned on Count(s) 1 RCW 9.94A.125.310.

[ ] A special verdict/finding for use of **deadly weapon other than a firearm** was returned on Count(s) _ RCW 9.94A.125, .310

[ ] A special verdict/finding of **sexual motivation** was returned on Count(s) _ RCW 9.94A.127

[ ] A special verdict/finding for **Violation of the Uniform Controlled Substances Act** was returned on Count(s) __

RCW 69.50.401 and RCW 69.50.435, taking place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.

[ ] A special verdict/finding that the defendant committed a crime involving the manufacture of methamphetamine **when a juvenile was present in or upon the premises of manufacture** was returned on Count(s). RCW 9.94A,-RC W 69.500.401(a), RCW 69.50.440.

[ ] The defendant was convicted of **vehicular homicide** which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030.

[ ] This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as

defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.

[ ] The court finds that the offender has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.

[X] The crime charged in Counts 1 & 2 involves **domestic violence**.

[ ] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.400):

CURRENT OFFENSES ENCOMPASSING
N/A

[ ] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

OTHER CURRENT OFFENSES USED IN CALCULATING OFFENDER SCORE
N/A

2.2 CRIMINAL HISTORY (RCW 9.94A.360):

CRIME		DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J	TYPE OF CRIME
1	Grand Larceny Washes	Unk	Bozeman, MT	12-6-54	A	NV
2	Petty Larceny	Unk	Aurora, CO	11-8/63	A	Unk
3	Assault/ Contempt of Court	Unk	Littleton, CO	8/17/66	A	Unk
4	Larceny	Unk	Big Horn County, WY	5-5-69	A	NV
5	Kidnapping	Unk	Powell, WY	5-14-69	A	V

	Washes					
6	False income tax return, conspiracy subscribe false income tax returns	Unk	Spokane, WA	6-3-87	A	Unk

[ ] The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.360.

[ ] The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.360):

PRIOR CONVICTIONS ENCOMPASSING
N/A

[ ] The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520:

PRIOR CONVICTIONS COUNTED AS ENHANCEMENTS

2.3 SENTENCING DATA:

Count No.	Offender Score	Seriousness Level	Standard Range (not including enhance-ments)	Plus Enhance-ment*	Total Standard Range (including enhance-ments)	Maximum Term
1	2	V	13-17 mos.	F	49-53 mos.	10 years
2	2	IV	12-14 mos.	N/A	12+-14 mos.	10 years

*(F) Firearm, (D) Other deadly weapons, (V) VUCSA in protected zone, (VH) Veh. Hom., See RCW 46.61.520, (JP) Juvenile Present

2.4 [ ] EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence

[ ] above [ ] within [ ] below the standard range for Count(s) ____. **Findings of fact and conclusions of law are attached in Appendix 2.4**. The Prosecuting Attorney [ ] did [ ] did not recommend a similar sentence.

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.142

[ ] The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.142):

_____

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are [ ] attached [X] as follows: Prosecutor recommends the high end of the sentencing range.

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1

3.2 [ ] The Court DISMISSES Counts N/A

[ ] The defendant is found NOT GUILTY of Counts N/A

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

$to be determined at a later date. Restitution to:

JASS CODE $ Restitution to:

RTN/RUN $ Restitution to:

(Name and Address—address may be withheld and provided confidentially to Clerk's Office)

PCV	$500.00	Victim assessment		RCW 7.68.035
CRC	$2,014.68	Court costs, including Criminal filing fee	$110.00 FRC	RCW 9.94A.03 9.94A.120, 10.01.160, 10.46.190
		Witness costs	$1241.08 WFR	
		Sheriff service fees	$413.60 SFR/SFS/SFW/WRF	
		Jury demand fee	$250.00 JFR	
		Other	$	
PUB	$_____	Fees for court appointed attorney		RCW 9.94A.030
WFR	$_____	Court appointed defense expert and other defense costs		RCW 9.94A.030
FCM/MTH	$_____	Fine RCW 9A.20.021;		
	$_____	VUCSA additional fine [ ] deferred due to indigency		RCW 69.50.430
CDF/LDI/FCD NTF/SAD/SDI	$____	Drug enforcement fund of _____		RCW 9.94A.030
CLF	~~$100.00~~	Crime lab fee [ ] deferred due to indigency		RCW 43.43.690
MTH	$_____	$3,000 Meth/Amphetamine Cleanup fine		RCW 69.50.440 or 69.50.401(a)(1)(ii)
EXT	$	Extradition costs		RCW 9.94A.120
	$	Emergency response costs (Vehicular Assault, Vehicular Homicide only, $1000 maximum)		RCW 38.52.430

$_____ Other costs for: _____

_____

$2,514.69 TOTAL RCW 9.94A.145

[ ] The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.142. A restitution hearing:

[ ] shall be set by the prosecutor

[ ] is scheduled for _____

[ ] RESTITUTION. Schedule attached, Appendix 4.1.

[ ] Restitution ordered above shall be paid jointly and severally (if adjudicated) with:

NAME of other defendant CAUSE NO. (VICTIM NAME) (AMOUNT)

[ ] The Department of Corrections (DOC) may immediately issue a Notice of Payroll Deduction.

RCW 9.94A.200010

All payments shall be made in accordance with the policies of the clerk and on a schedule established by DOC, commencing immediately, unless the court specifically sets forth the rate here: Not less than $_____ per month commencing _____. RCW 9.94A.145

[ ] In addition to the other costs imposed herein the Court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the statutory rate. RCW 9.94A.145.

[ ] The defendant shall pay the costs of services to collect unpaid legal financial obligations. RCW 36.18.190.

[ ] The financial obligations imposed in this judgment shall bear interest from the date of the Judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.

4.2 [ ] HIV TESTING. The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

[X] DNA TESTING. The Defendant shall have a blood sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

4.3 The defendant HOWARD RALPH BLAKELY shall not have contact with Yolanda Blakely (dob 2-20-56) and Ralphy H. Blakely (dob 01-01-85) name, DOB, including, but not limited to, personal, verbal, telephonic, written or contact through a third party for _____ years (not to exceed the maximum statutory sentence)

4.4 **OTHER:** _____

[ ] The following firearm(s) shall be forfeited pursuant to RCW 9.41.098: _____

_____

_____

[ ] _____

_____

_____

_____

_____

_____

_____

_____

4.5 **CONFINEMENT OVER ONE YEAR.** The defendant is sentenced as follows:

(a) **CONFINEMENT.** RCW 9.94A.400. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

*90	months on Count	1		months on Count	
14	months on Count	2		months on Count	
	months on Count			months on Count	

* Exceptional sentence; Findings of Fact and Conclusions of Law are attached

Actual number of months of total confinement ordered is: __

(Add mandatory firearm and deadly weapon enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm or other deadly weapon as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: _____

_____

The sentence herein shall run consecutively with the sentence in cause number(s) _____

but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.400.

Confinement shall commence immediately unless otherwise set forth here: _____

_____

(b) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.120. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: _____

4.6 [√] **COMMUNITY PLACEMENT** is ordered as follows: Count 1 and 2 for 12 months; Count ___ for ___ months; Count ___ for ___ months.

[ ] **COMMUNITY CUSTODY** is ordered as follows:
Count ____ for a range from ____ to ____ months;
Count ____ for a range from ____ to ____ months;
Count ____ for a range from ____ to ____ months;
or for a period of earned early release awarded pursuant to RCW 9.94A.150(1) and (2), whichever is longer and standard mandatory conditions are ordered. [See RCW 9.94A for community placement offenses-serious violent offense, second degree assault, any crime against a person with a deadly weapon finding. Chapter 69.50 or 69.52 RCW offense. Community custody follows a term for a sex offense-RCW 9.94A. Use paragraph 4.7 to impose community custody following work ethic camp.]

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community service; (3) not consume controlled substances except pursuant to lawfully issued prescriptions; (4) not

unlawfully possess controlled substances while in community custody; (5) pay supervision fees as determined by DOC; (6) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

[ ] The defendant shall not consume any alcohol.

[√] Defendant shall have no contact with: Any member of victim's immediate family.

[ ] Defendant shall remain [ ] within [ ] outside of a specified geographical boundary, to wit: _____

_____.

[ ] The defendant shall participate in the following crime related treatment or counseling services: _____

_____

[√] The defendant shall undergo an evaluation for treatment for [ ] domestic violence [ ] substance abuse [√] mental health [ ] anger management and fully comply with all recommended treatment.

[ ] The defendant shall comply with the following crime-related prohibitions: _____

_____

Other conditions may be imposed by the court or DOC during community custody, or are set forth here: defendant shall pay all court-ordered legal financial obligations: _____

_____

_____

_____

4.7 [ ] **WORK ETHIC CAMP**. RCW 9.94a.137, RCW 72.09.410. The court finds that defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

4.8 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections: _____

_____

V. NOTICES AND SIGNATURES

5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter except as provided for in RCW 10.73.100. RCW 10.73.090.

5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period of up to 10 years from

the date of the sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed all on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.145 and RCW 9.94A.120(13).

5.3 **NOTICE OF INCOME-WITHHOLDING ACTION**. If the court has not ordered an immediate notice of payroll deduction in paragraph 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.200010. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.200030.

5.4 **RESTITUTION HEARING.**

[ ] Defendant waives any right to be present at any restitution hearing (sign initials): _____.

5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.200.

5.6 **FIREARMS. You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record.** (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification, to the Department of Licensing along with the date of conviction or commitment). RCW 9.41.040, 9.41.047.

Cross off if not applicable:

~~5.7 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200. Because this crime involves a sex or kidnapping offense (e.g. kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW where the victim is a minor and you are not the minor's parent), you are required to register with the sheriff of the county of the state of Washington where you reside. If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.~~

~~If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within 30 days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry out a vocation in Washington, or attend school in Washington, you must register within 30 days after starting school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections.~~

~~If you change your residence within a county, you must send written notice of your change of residence to the sheriff within 72 hours of moving. If you change your residence to a new county within this state, you must send written notice of your change of residence to the sheriff of your new county of~~

~~residence at least 14 days before moving, register with that sheriff within 24 hours of moving and you must give written notice of your change of address to the sheriff of the county where last registered within 10 days of moving. If you move out of Washington state, you must also send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington state.~~

~~If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier.~~

~~Even if you lack a fixed residence, you are required to register. Registration must occur within 24 hours of release in the county where you are being supervised if you do not have a residence at the time of your release from custody or within 14 days after ceasing to have a fixed residence. If you enter a different county and stay there for more than 24 hours, you will be required to register in the new county. You must also report in person to the sheriff of the county where you are registered on a weekly basis if you have been classified as a risk level II or III, or on a monthly basis if you have been classified as a risk level I. The lack of a fixed residence is a factor that may be considered in determining a sex offender's risk level.~~

~~If you move to another state, or if you work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and photograph with the new state 10 days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. You must also send written notice within 10 days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in Washington State.~~

5.8 **OTHER**: _____

_____

DONE in Open Court and in the presence of the defendant this date: 11/13, 2000.

/s/
EVAN E. SPERLINE, JUDGE

/s/	/s/	/s/
John Knodell	Doug Phelps	HOWARD RALPH BLAKELY,
WSBA #11284	WSBA #22920	Defendant
(Deputy)	Attorney for	
Prosecuting Attorney	Defendant	

Translator signature/Print name: _____

I am a certified interpreter of, or the court has found me otherwise qualified to interpret, the _____ language, which the defendant understands. I translated this Judgment and Sentence for the defendant into that language.

SUPERIOR COURT OF WASHINGTON
IN AND FOR THE COUNTY OF GRANT

STATE OF WASHINGTON, Plaintiff, vs. HOWARD RALPH BLAKELY, Defendant.	No. 98-1-00610-5 FINDINGS OF FACT & CONCLUSIONS OF LAW RE: EXCEPTIONAL SENTENCE

An exceptional sentence above the standard range should be imposed herein based upon the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The defendant and Yolanda Blakely married in 1973. They raised three children, Becky, Lorene and Ralph III (Ralphy). In May 1995, Yolanda left the family home with Lorene and Ralphy, eventually settling in Spokane. There she filed a divorce action in August, 1995.

2. During the marriage, the Blakelys created a trust, known as the Blakely Fay Trust, as a tax shelter. In 1996, Yolanda commenced a lawsuit to unravel the trust. There was also other litigation, and a great deal of animosity, between the Blakelys after their separation. Mrs. Blakely obtained a restraining order in the divorce case to prohibit the defendant from approaching her or her home.

3. The Blakelys acquired a considerable number of real properties, including a home, ranch and development property in Three Forks, Montana, an orchard and home in Grant County, a lake home, and several rental properties. In December, 1997, Mrs. Blakely obtained from the Spokane

divorce court authority to occupy the home and orchard. She moved to that property and undertook management of the orchard in January, 1998. In June, 1998, Ralphy joined her, having remained in Spokane to finish the seventh grade. Yolanda obtained a modification of the subsisting restraining order to prohibit the defendant from approaching the orchard property.

4. In October, 1998, Ralphy was attending 8th grade in Royal City and helping with the orchard. Harvest was completed around mid-October. Ralphy regularly left on a bus for school around 6:00 a.m., and returned on a bus about 6:00 to 6:30 p.m., after football practice.

5. The Blakely home was located in roughly the middle of the east side of the orchard. Just after 3:00 p.m. on October 26, Yolanda walked from the area of the house to the southeast corner of the property, about 900 feet, along a road/driveway, to retrieve her mail. As she returned, the defendant emerged from the apple trees south of the house. He approached Yolanda, pointing out a spider on her mail. As she disposed of the spider, she saw that the defendant appeared very angry. He grabbed her wrists and arms, twisting them. A scuffle ensued.

6. The defendant got Yolanda down on the ground near the first row of trees. He pinned her to the ground by painfully driving his knee into her ribs, and pulled a roll of duct tape from a plastic sack in his rear pocket. He attempted to cover her mouth with duct tape, wrapping it several times around her head, face and chin. He taped her wrists together very tightly.

7. The defendant carried Yolanda to an area between the rows of apple trees. In a very angry voice, the defendant said during this time, "You had no business filing the divorce – I want it dismissed;" "I want the trust litigation

dismissed;" and "cooperate with me so you won't get hurt any more." The defendant walked Yolanda west through the orchard on a service road, saying, "We need to get ahold of Lorene to help get the trust litigation dismissed." He also mentioned "O.J." and a "Dr._____" getting away with what they did, suggesting he would too.

8. At the end of the service road, the defendant led Yolanda south to a place where he had hidden his pickup truck from view in some willow trees near the southwest corner of the orchard. He told her that he had many guns and ammunition, and several knives, with him. He told her that if she failed to cooperate, they were both going to die.

9. Mr. Blakely opened the lift gate of the pickup canopy, revealing in the bed of the pickup a coffin-like plywood box. He produced a knife, and ordered Yolanda to climb into the box. Yolanda climbed slowly over the pickup tailgate, and the defendant held the knife close to her face, demanding that she hurry. When she lay down in the box, the defendant closed and latched the lid. The interior of the box is approximately the same width as, and about three inches longer than, Yolanda's body. Air holes had been drilled in the lid and ends of the box.

10. The defendant then drove the pickup rapidly through the orchard to an area between tree rows near the back of the house. He then opened the box lid and held the knife to Yolanda's face, demanding to know where her car keys were. He then shut the box again. He brought Yolanda's Ford car to the same vicinity, and apparently began to load belongings from the house into the vehicles. On about four more occasions, the defendant opened the plywood box to extract information from Yolanda, such as when Ralphy would be home, where certain property items and documents could be found, and the address of the Blakely's oldest daughter, Becky. Throughout this process, the defendant appeared to grow

increasingly agitated and mean. He pressed the knife blade to Yolanda's throat or nostrils to compel her compliance, telling her he had just sharpened the knife, that he could cut her right now, and that she'd bleed to death.

11. As night fell, Yolanda complained of being cold and the defendant placed a blanket in the plywood box over her. After she heard the school bus stop out on the road, Yolanda attempted to holler and bang her feet on the box to warn her son of the danger. As Ralphy, then age 13, walked up the dark driveway, the defendant emerged from between the apple trees. He said, "Your mother's in great danger. Come with me and don't cause any trouble." Ralphy saw the knife, and the defendant said that he was desperate, and would use the knife if he needed to.

12. The defendant led Ralphy behind the orchard shop and house to a space between the 4th and 5th tree rows, where he saw the defendant's pickup and his mother's car. He heard yelling and kicking from inside the pickup, and heard his mother cry out, "Ralphy, are you okay?" and "Don't hurt him, Howard!" The defendant opened the lift gate and Ralphy saw the wooden box, but it remained closed. The defendant advised Ralphy that they were leaving, and he was going with them. He began to direct Ralphy to prepare to depart.

13. The defendant permitted his son to use the bathroom inside the house, and Ralphy used the opportunity to attempt to locate a pistol in his mother's closet, but was unable to find it. Before departing the orchard property, the defendant told Ralphy that he had a loaded shotgun in the pickup and if Ralphy "tried anything," all the defendant had to do was turn it around toward the wooden box and pull the trigger.

14. The defendant directed Ralphy, age 13, to drive his mother's car, and defendant drove his pickup with Yolanda inside the wooden box. After driving approximately five

miles, the two vehicles stopped at the Mar Don Resort store for gas, but it was closed. The defendant opened the pickup canopy lift gate and opened the lid of the wooden box "to give [Yolanda] some air." At that time, Ralphy first saw his mother, wrapped in a blanket, inside the box. He saw the duct tape wrapped around her face and head. The defendant repeated to Ralphy the warning that his mother's safety depended on his cooperation.

15. It was decided the party would drive to Ernie's Truck Stop on the outskirts of Moses Lake for gas (at Yolanda Blakely's suggestion. After driving another ten miles, defendant stopped again and opened the wooden box, just before entering Highway 17 about two miles south of Ernie's. Upon arriving at the truck stop, defendant drove his pickup far to the rear of the property, behind several parked trucks, and instructed Ralphy on the routine they would follow to fuel the vehicles and pay for the fuel. Defendant first pulled the pickup to the pumps and filled its tank; then Ralphy pulled the car to the pumps and fueled it. Defendant and Ralphy then entered the truck stop store.

16. As the defendant reached the cashier's counter, Ralphy suddenly moved to a second cashier and shouted, "Call 9-1-l! Help us! He kidnapped us! He has my mom in a box!" The defendant grabbed Ralphy by the arm and dragged him from the store. Ralphy tried to prevent his removal by clinging to the door jamb, but was dragged outside. There the scuffling continued, until some truck drivers hollered at the defendant to leave the boy alone. The defendant then released Ralphy and ran to the cab of the pickup.

17. Ralphy chased after the defendant and jumped on the rear bumper, attempting to open the box to free his mother. The defendant drove rapidly out of the truck stop lot, shaking Ralphy loose from the vehicle as it bumped over the gutter. Ralphy ran back into the store, where the clerk had

reached the 9-1-1 operator, and he provided a description of the defendant and his pickup to the operator.

18. The defendant drove south on Highway 17. Because the lift gate was up, Yolanda was nauseated by the diesel fumes entering the wooden box. After about half an hour, the defendant stopped the pickup. Just before the stop, the lid of the wooden box became unlatched and Yolanda was able to sit up briefly. She realized they were near a cattle feed lot in the area of Warden.

19. The defendant was angry and agitated, shouting "Ralphy ruined everything!" Yolanda told the defendant she felt sick and needed to urinate. He helped her out of the box (where she had remained for approximately four hours) and, because her hands were taped, assisted in pulling down her pants so she could empty her bladder. His tone was urgent, demanding and angry. He instructed her that she could now ride in the cab as long as her wrists remained bound, and roughly removed the tape (along with some hair) from her head and face. In the cab, the defendant again displayed the knife to Yolanda, then laid it in her view on the dashboard ledge. He instructed her that, if they were stopped, she must tell the police that she was accompanying defendant of her own free will.

20. The defendant had piled food, water, business files and other items next to the passenger door, so Yolanda had to sit next to him in the cab. They eventually drove from Warden to Lind, on Highway 26 to Colfax, Highway 195 to Pullman and Lewiston, Idaho, Highway 12 to Orofino, Idaho, Lolo, Montana and Missoula, Montana, and 1-90 to Three Forks, Montana.

21. At some point in Idaho, defendant removed the tape from Yolanda's wrists. The two discussed issues relating to their divorce. They shared a banana.

22. East of Orofino, one of the pickup's tires blew. The defendant responded angrily to the frustration and delay of changing the tire. He ordered Yolanda back into the wooden box, where she stayed for approximately 45 minutes while defendant changed the tire. Later, as they neared Lolo, the defendant stopped and ordered Yolanda back into the wooden box so that he could stop for gas. He drove a short distance to a gas station, filled the tank, and drove on for a while before stopping to let Yolanda out of the box. She spent about half an hour in the box on this occasion.

23. Exiting 1-90 at Three Forks, the defendant stopped at a farm and ordered Yolanda back into the wooden box. He then drove a short distance, used a pay phone, then drove rapidly along a road Yolanda recognized from its extreme dustiness and bumps, and from cattle guards over which the pickup traveled. The Blakely's Montana home is on this road nearby. Defendant finally stopped the pickup and, after a delay, opened the lift gate and wooden box. Yolanda emerged cramped, bruised, gasping for air, her legs "asleep." They were at the home of Mary Gillespie, whom Yolanda had not before met.

24. Yolanda was allowed to clean up in Ms. Gillespie's bathroom. When the defendant returned briefly to the pickup, Ms. Gillespie and Yolanda formulated a plan to contact the police. While at the home, the defendant telephoned his friend Ilse Barros, telling her that he had kidnapped Yolanda and Ralphy, that Ralphy had gotten away, and that the defendant was in trouble. He called daughter Lorene, telling her to go to Moses Lake to find Ralphy and to call "the lawyers" to stop both the divorce and trust litigation. He told Lorene Yolanda was sleeping, but when Lorene heard Yolanda speaking in the background, the defendant allowed Yolanda to talk to Lorene, instructing her what to say. The defendant also called a stock broker in Billings, received some price quotations and gave the broker certain sell orders. The

defendant discussed with Yolanda the trust litigation and sale of the Grant County orchard, which he insisted be done immediately. He instructed Mary Gillespie to retrieve from his father (who was staying nearby) a copy of the legal description of the Blakelys' Logan, Montana property-which had been titled in Yolanda's name-so that he could prepare a deed for Yolanda to sign. He sat at the kitchen table and began to do some typing when he looked outside and saw that the house was surrounded by police officers.

25. The defendant instructed Yolanda to go outside and tell the police she had come voluntarily. Yolanda walked out and told the police of the kidnapping. Ultimately, the defendant was taken into custody without incident.

26. At various times since 1972, the defendant has been assessed by mental health professionals. He has been diagnosed as suffering from schizophrenia, paranoid type, on several occasions. He has been diagnosed by others as being free of any such psychosis, but having a pervasive personality disorder. The most thorough evaluation of the defendant's mental status was accomplished at Eastern State Hospital during the pretrial course of this case.

27. Defendant has an (Axis II) Paranoid personality disorder with schizotypal traits and a Narcissistic personality disorder with antisocial traits. Because of the first disorder, the defendant tends to experience life through a pervasive distrust and suspiciousness of others, a conviction that others are exploiting, harming or deceiving him, a doubt of the loyalty or trustworthiness of friends and associates, a reluctance to confide in others due to a fear that the disclosures will be maliciously used against him. He reads hidden or threatening meaning into innocuous or neutral events, perceives attacks on his character that are not apparent, and bears persistent grudges. These traits are not limited to times when the

defendant is experiencing a mood disorder, that is, they constitute lifelong patterns not caused by a medical problem.

28. Because of the narcissistic personality disorder, the defendant tends to have a grandiose sense of his own importance and to exaggerate his own achievements and talents. He expects to be recognized as superior without commensurate achievements, and is pre-occupied with ideas of importance and ideal love. He feels "entitlement" and that he is "special." The defendant lacks empathy, is envious and believes others are envious of him, and tends toward arrogant, haughty behavior.

29. The defendant's personality disorders influence and direct, but do not cause, his behavior. Defendant is able to sufficiently perceive the impacts of his conduct on others to behave with deliberate cruelty.

30. The kidnapping of Yolanda Blakely by the defendant was a domestic violence offense.

31. The defendant's motivation to commit kidnapping was complex, contributed to by his mental condition and personality disorders, the pressures of the divorce litigation, the impending trust litigation trial and anger over his troubled interpersonal relationships with his spouse and children. While he misguidedly intended to forcefully reunite his family, his attempt to do so was subservient to his desire to terminate lawsuits and modify title ownerships to his benefit.

32. The defendant's methods were more homogeneous than his motive. He used stealth and surprise, and took advantage of the victim's isolation. He immediately employed physical violence, restrained the victim with tape, and threatened her with injury and death to herself and others. He immediately coerced the victim into providing information

by the threatening application of a knife. He violated a subsisting restraining order.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the court makes the following Conclusions of Law:

1. As described in RCW 9.94A.390(l)(e), the defendant's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was impaired by his personality disorders, but not significantly so. Defendant's personality disorders did not significantly impair his capacity to act with deliberate cruelty.

2. Repeatedly and protractedly confining his victim in a coffin-like box manifested deliberate cruelty to the victim, as described in RCW 9.94A.390(2)(a).

3. As described in RCW 9.94A.390(2)(h), the current offense involved domestic violence, as defined in RCW 10.99.020, and occurred within sight and sound of the victim and defendant's minor child. The defendant's conduct manifested deliberate cruelty to, and intimidation of, the victim.

4. Considering the purposes of chapter 9.94A RCW, and in light of a standard range for kidnapping in the second degree of 13 to 17 months (enhanced to 49 to 53 months by firearm enhancement), the foregoing findings of fact and conclusions of law constitute substantial and compelling reasons justifying an exceptional, aggravated sentence.

5. A sentence of 90 months incarceration is a just and deserved punishment for defendant's conduct.

DONE IN OPEN COURT this 13 day of Nov., 2000.

/s/ Evan E. Sperline
JUDGE

SUPERIOR COURT OF WASHINGTON
FOR GRANT COUNTY

STATE OF WASHINGTON, Plaintiff, v. HOWARD RALPH BLAKELY, Defendant.	No. 98-1-00610-5 Court of Appeals No. 19545-7-III VERBATIM REPORT OF PROCEEDINGS

MORNING SESSION OCTOBER 4, 2000

* * *

JUDGE SPERLINE: Let me first say that – I think the defense argument and the theory that's presented is well crafted and well thought out and it's frankly sensible, but ultimately, and I don't mean this in any way disrespectfully, it ends up chasing its tail for reasons I will expiain.

In the case of *Apprendi v. New Jersey* the United states Supreme Court was confronted with a situation where the defendant was convicted of an unlawful possession of firearm crime which carried a maximum penalty of, I believe it was, five to 10 years under their sentencing system. However, under New Jersey law, under a different statute called the hate crime statute, the court, the sentencing judge found that the crime was committed with a state of mind prescribed by that hate crime statute, that the sentencing range increased so that it was no longer five to 10 but became 10 to 20, which was identical with a higher degree of unlawful possession of a firearm.

I think, if I recall correctly, it would be the defendant would end up being convicted of unlawful possession of a firearm in the second degree and end up being sentenced to a sentence that he would have received were he convicted of unlawful possession of a firearm in the first degree. That case was decided just June 26 of this year, less than, what is that 4 months ago, and yet it has been discussed in a host of federal cases since that time.

Those cases have, with little exception, taken the position that the holding in *Apprendi* was narrow and that it turned on two circumstances. The first of those being that the result under the New Jersey statute required the application of two different statutes, one of which was charged in the charging document and one of which was not. And secondly, that the range ended up, by application of the hate crime statute, being increased beyond what would have been imposable under a jury verdict returned on what was charged in the Information. Neither of those circumstances are present in the case that's now before this court.

From the official syllabus to *Apprendi* here's what the decision is described as doing. It says:

> In light of the constitutional rule expressed here, New Jersey's practice cannot stand. it allows a jury to convict a defendant of a second degree offense on its finding beyond a reasonable doubt and then allows a judge to impose punishment identical to that which New Jersey provides for first degree crimes on his finding, by a preponderance of the evidence that the defendant's purpose was to intimidate his victim based on the victim's particular characteristic.

Skipping some language, it goes on to say:

> The degree of culpability the legislature associates with factually distinct conduct has significant implications both for a defendant's liberty and for the heightened stigma associated with an offense the legislature has selected as worthy of greater punishment.

In chronologicai order, the first case that I thought was helpful decided after *Apprendi* was from the Southern District of California, *United States v. Kelly*, decided on July 14, 2000, in which the court explained as follows and I quote:

> The *Apprendi* court confronted an admittedly narrow issue. The case involved two independent state statutes working in tandem, not one statutory section as in *Jones* and *Castillo*. The first statute punishes possession of a firearm for an unlawful purpose by imprisonment for between five and 10 years. The second statute, known as a hate crime law, increases the sentencing range to between 10 and 20 years if the trial judge finds by a preponderance of the evidence that the defendant acted with a purpose to intimidate an individual or group of individuals because of race. . . .

Under that statute in *Apprendi* the defendant was sentenced to 12 years. In *Kelly* the court points out that -- Justice O'Connor and Thomas I think in one case dissenting and in one concurring opinion, make clear:

> That the majority establishes a narrow bright line rule that turns exclusively on whether the relevant factor increases the penalty beyond the prescribed statutory maximum.

We begin to see a divergence between *Apprendi* and this case, that is the Blakely case, because in Mr. Blakely's case the court is bound by the statutory maximum for his crime of conviction and we're talking about where beneath that statutory maximum his sentence should fall.

In *United States v. Aguayo-Delgado*, decided on July 18 in the Eighth Circuit united states court of Appeals, the court says the rule of *Apprendi*, that other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt only applies where the nonjury factual determination increases the maximum sentence beyond the statutory range authorized by the jury's verdict. if the nonjury factual determination only narrows the sentencing judge's discretion within the range already authorized by the offense of conviction, then the governing constitutional standard is provided by *McMillan*, which allows the legislature to raise the minimum penalty associated with a crime based on nonjury factual findings as long as the penalty is within the range specified for the crime for which the defendant was convicted by the jury.

I won't cite from it, but the next case is similar and it is *United States v. Smith*, decided August 17 of this year in the seventh circuit.

On that same day the Third Circuit United States Court of Appeals decided *United States v. Scepro* in which it is noted:

> Because application of the sentencing guidelines in this case does not implicate a fact that would increase the penalty of a crime beyond the statutory maximum, the teachings of *Apprendi v. New Jersey* are not relevant here.

The United States District Court for New Jersey decided *Doe v. United States* on August 23rd and I quote from that decision:

> In *Apprendi*, the Supreme Court overturned a sentencing scheme that allowed a state judge, by a preponderance of the evidence, to enhance a defendant's penalty beyond the prescribed statutory maximum sentence. The enhanced sentence was similar to the sentence for first degree unlawful possession, although petitioner had only been charged and convicted of the second degree offense. Petitioner's case does not fall within the *Apprendi* ruling. First, petitioner was not sentenced beyond the statutory maximum. According to 21 U.S.C. section 841, where five kilograms or more of cocaine are attributed to the defendant, "such person shall be sentenced to a term of imprisonment which may not be more than 10 years or more than life." Petitioner does not contest his participation in an offense involving at least five kilograms of cocaine, and his sentence of 151 months is clearly within the statutory boundaries. Furthermore, petitioner was not sentenced under an additional statute, not referenced in the indictment and plea agreement, as the case was in *Apprendi*. In *Apprendi*, the defendant was given no notice that his admission of guilt on one count subjected him to the penalties of another statute. Petitioner, in the instant case, pled guilty to violating 21 U.S.C. sections 841, 846 and was sentenced under these sections only.

I note that the same really is true of the case that's -- this case, the Blakely case -- on August 24th the Sixth Circuit decided

United States v. Corrado in which they say because the district court did not sentence either defendant to a term of more than 20 years on the RICO counts, *Apprendi* is not triggered and the existence of a murder conspiracy did not have to be decided by a jury under the reasonable doubts standard.

The same holding is found -- is used by the Fifth Circuit, the same reasoning I should say, by the Fifth Circuit in *U.S. v. Meshack*, August 28 of this year in which, after describing the offense of conviction and a jury verdict, the court says quote:

> The minimum statutory range for this offense was zero to 20 years. See 21 U.S.C. section 841(a)(1). As his 168 month sentence was within this range it was permissible because the defendant's sentence was not enhanced beyond the statutory range based on a fact not contained in the indictment or presented to the jury.

The Ninth Circuit, in which we do business, decided *U.S. v. Hernandez-Guardado*, on September 7th, less than a month ago, and their finding is similar, also their description of the narrowness in the holding of *Apprendi*.

The Ninth Circuit on September 11 decided *U.S. v. Nordby* in which they point out from the *Apprendi* decision:

> We do not overrule *McMillan*. we limit its holding to cases that do not involve the imposition of a sentence more severe than the statutory maximum for the offense established by the jury's verdict, a limitation identified in the *McMillan* opinion itself.

Citing from the *Apprendi* decision at 120 Supreme Court page 2361.

That those cases are an appropriate reading of *Apprendi* seems clear to me when I consider what it is that the defense in this case would have the court do, would have the law be, if you will, based on *Apprendi*. And as I see it, the defense is asking that the court require three things because of *Apprendi* in order to impose an exceptional sentence beyond the standard range.

Those three things are that the finding of those aggravating factors would have to be based upon a standard of proof beyond a reasonable doubt. Secondly, that it would have to be made, unless waived, by a jury as opposed to a sentencing judge. And third, those factors would have to be charged in the Information before the evidence was presented.

And that is the point at which the argument, in my opinion, logically chases its tail because in this case the defendant's guilt was established by a plea, but in many cases it would be established only by a trial with a full airing of the facts and a full finding by the jury. In either event, the state would be unable to necessarily allege in its charging information those facts which later developed to justify an exceptional sentence, or, for that matter, a mitigated sentence. And the reason that the state is not required to do that arises from these decisions themselves because the sentence imposed or proposed to be imposed in this case is within the sentence authorized by the legislature for conviction of what is charged in the Information, unlike *Apprendi* where the sentence of 12 years was not within the statutory maximum for what was alleged in the Information.

And here, with this view of *Apprendi*, then we have a situation in which not only is logic served and the practical requirements of the criminal justice system, but also the

Sentence Reform Act emerges as a constitutional requirement, a constitutional set of sentencing standards that gives the defendant notice of what his maximum punishment could be and from which maximum an exceptional sentence does not vary.

At the time of making a guilty plea the defendant acknowledges that the court is not bound by the recommendations made and that the defendant could be sentenced to anything that is allowed by law in regard to the crime of conviction or the crime to which he pleads. And in terms of just the operation of the system itself, the Sentence Reform Act is intended to structure but not eliminate the discretion of a sentencing judge. And the defense view of what is now required would frankly eliminate a substantial area of discretion extended by the legislature to the sentencing judge consistent with the practices of both the judicial and the legislative branches since the beginnings of our state and nation.

It seems to me then that the requirements of *Apprendi* do not apply to a case in which the court proposes to sentence the defendant within the maximum standard range, in this case 10 years, adopted by the legislature and proscribed as the appropriate level of punishment for this offense.

I believe that this court was mistaken in proposing to sentence Mr. Blakely to an exceptional sentence based upon a victim impact statement which was not made under oath and which was not subject to cross examination, but that the correct response to that is to conduct a hearing, a sentencing hearing under the statute in which testimony is presented and the defendant is given an opportunity to cross examine and to present evidence and the court, the judge without a jury, makes findings based upon that evidence on a standard of preponderance of the evidence as opposed to findings beyond a reasonable doubt. That conclusion I believe is supported by

the authorities in our state law and also by the decisions of the federal courts. And having reached that conclusion I would conclude that the defense motion should be denied.

60

SUPREME COURT OF WASHINGTON

State

v.

Howard R. Blakely

No. 72785-6
February 04, 2003

Appeal From: 19545-7-III, 111 Wash. App. 851, 47 P.3d 149

Petition for Review: Denied.

61

SUPERIOR COURT OF WASHINGTON
FOR GRANT COUNTY

STATE OF WASHINGTON, Plaintiff, v. RALPH HOWARD BLAKELY, Defendant.	)	No. 98-1-00610-5 STATEMENT OF DEFENDANT ON PLEA OF GUILTY TO A FELONY (STTDFG)

1. My true name is RALPH HOWARD BLAKELY.

2. My age is 64. Date of birth is 6-3-36.

3. I went through the 12th grade.

4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:

(a) I have the right to representation by a lawyer, and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is Doug Phelps.

(b) I am charged with

COUNT	CRIME with RCW
1	KIDNAPPING IN THE SECOND DEGREE, DOMESTIC VIOLENCE, RCW 9A.40.030(1), 10.99.020 & RCW 9.94A.125 (CRIME CODE 00655)
2	~~KIDNAPPING IN THE SECOND DEGREE, DOMESTIC VIOLENCE, RCW 9A.40.030(1) & 10.99.020 (CRIME CODE 00655)~~ SECOND DEGREE ASSAULT [initialed]

The elements of the crime(s) are:

COUNT 1:

(1) That on or about October 26, 1998, the defendant intentionally abducted another person;

(2) That the defendant restrained that person by secreting or holding the person in a place where that person was not likely to be found or using or threatening to use deadly force;

(3) That the defendant was armed with a deadly weapon; and

(4) That the acts occurred in Grant County, Washington.

COUNT 2:

(1) That on or about October 26, 1998, the defendant intentionally ~~abducted~~ assaulted another person; with a deadly weapon, to wit: a gun. [initialed]

(2) ~~That the defendant restrained that person by secreting or holding the person in a place where that person was not likely to be found or using or threatening to use deadly force; and~~

(3) That the acts occurred in Grant County, Washington.

5. I UNDERSTAND THAT I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY PLEADING GUILTY:

(a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed;

(b) The right to remain silent before and during trial, and the right to refuse to testify against myself;

(c) The right at trial to hear and question the witnesses who testify against me.

(d) The right at trial to testify and to have witnesses testify for me. These witnesses can be made to appear at no expense to me;

(e) I am presumed innocent unless the charge is proven beyond a reasonable doubt or I enter a plea of guilty.

(f) The right to appeal a finding of guilt after a trial.

6. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA, I UNDERSTAND THAT:

(a) Each crime with which I am charged carries a maximum sentence, a fine, and a STANDARD SENTENCE RANGE as follows:

COUNT NO.	STANDARD RANGE (not including enhancements)	Plus Enhancement for Firearm (F), other deadly weapon (D) or VUSCA (V) in protected zone	Total STANDARD RANGE (including enhancement)	MAXIMUM TERM AND/OR FINE
1	13-17 mos.	F (36 m)	49-53 mos.	10 years
2	13-17 mos.	N/A	13-17	10 years

(b) The standard sentencing range is based on the crime charged and my criminal history. Criminal history includes prior convictions and juvenile adjudications or

convictions, whether in this state, in federal court, or elsewhere.

(c) The prosecuting attorney's statement of my criminal history is:

CRIME		DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J	TYPE OF CRIME
1	Grand Larceny Washes	Unk	Bozeman, MT	12-6-54	A	NV
2	Petty Larceny	Unk	Aurora, CO	11-8-63	A	Unk
3	Assault/Contempt Of Court	Unk	Littleton, CO	8-17-66	A	Unk
4	Larceny	Unk	Big Horn County, WY	5-5-69	A	NV
5	Kidnapping Washes	Unk	Powell, WY	5-14-69	A	V
6	False Income Tax Return, Conspiracy Subscribe False Income Tax Return	Unk	Spokane, WA	6-3-87	A	Unk

Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I have attached my own statement, I assert that it is correct and complete. If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.

(d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this charge is binding upon me. I cannot change my mind if

additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase or a mandatory sentence of life imprisonment without the possibility of parole is required by law.

(e) In addition to sentencing me to confinement; the judge will order me to pay $500.00 as a victim's compensation fund assessment. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The amount of restitution may be up to double my gain or double the victim's loss. The judge may also order that I pay a fine, court costs, and attorney fees and the costs of incarceration.

(f) In addition to sentencing me to confinement, the judge may order me to serve up to one year of community supervision if the total period of confinement ordered is less than 12 months and community custody or community placement is not required due to the nature of the crime. If this crime is a drug offense, assault in the second degree, assault of a child in the second degree, or any crime against a person in which a specific findings was made that I or an accomplice was armed with a deadly weapon, the judge will order me to serve at least one year of community placement. If this crime is a vehicular homicide, vehicular assault, or a serious violent offense, the judge will order me to serve at least two years of community placement. If this crime is a sex offense, the court will order me to serve at least three years of community custody. During the period of community placement, community custody, or community supervision, I will be under the supervision of the Department of Corrections, and I will have restrictions placed on my activities. My failure to comply with these conditions will render me ineligible for general assistance RCW 74.040.005(6(h).

(g) The prosecuting attorney will make the following recommendation to the judge:

Prosecutor recommends the high end of the sentencing range. Pay restitution should any be owed.

(h) The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard sentence range unless the judge finds substantial and compelling reasons not to do so. If the judge goes outside the standard range either the State or I can appeal that sentence. If the sentence is within the standard range, no one can appeal the sentence.

(i) If I am not a citizen of the United states, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

(j) I understand that I may not possess, own, or have under my control any firearm unless my right to do so is restored by a court of record and that I must immediately surrender any concealed pistol license. RCW 9.41.040

NOTIFICATION RELATING TO SPECIFIC CRIMES: IF ANY OF THE FOLLOWING PARAGRAPHS DO NOT APPLY, THEY SHOULD BE STRICKEN AND INITIALED BY THE DEFENDANT AND THE JUDGE

(k) This offense is a most serious offense or strike as defined by RCW 9.94A.030, and if I have at least two prior convictions for most serious offenses, whether in this state, in federal court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole. In addition, if this offense is (1) rape in the first degree, rape of a child in the first degree, rape in the

second degree, rape of a child in the second degree, indecent liberties by forcible compulsion, or child molestation in the first degree, or (2) murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, or burglary in the first degree, with a finding of sexual motivation, or (3) any attempt to commit any of the crimes listed in this sentence, and I have at least one prior conviction for one of these listed crimes in this state, in federal court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole.

(l) ~~The judge may sentence me as a first time offender instead of giving a sentence within the standard range, if I qualify under RCW 9.94A.030. This sentence could include as much as 90 days' confinement, two years community supervision, plus all of the conditions described in paragraph (e). Additionally, the judge could require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or occupation training.~~ [Initialed]

(m) ~~The judge may suspend execution of the standard range term of confinement under the special sex offender sentencing alternative (SSOSA) if I qualify under RCW 9.94A.120(8). If the judge suspends execution of the standard range term of confinement, I will be placed on community custody for the length of the suspended sentence or three years; whichever is greater. I will be ordered to serve up to 180 days of total confinement, I will be ordered to participate in sex offender treatment, and I will be subject to all of the conditions described in paragraph (e). Additionally, the judge could require me to devote time to a specific occupation, and to pursue a prescribed course of study or occupational training. If a violation of the sentence occurs during~~

~~community custody, the judge may revoke the suspended sentence.~~ [Initialed]

(n) ~~Because this crime involves a sex offense or a kidnapping offense involving a minor, I will be required to register with the sheriff of the county of the state of Washington where I reside. If I am not a resident of Washington, but am I am a student in Washington or I am employed in Washington or I carry on a vocation in Washington, I must register with the sheriff of the county of my school, place of employment, or vocation. I must register immediately upon being sentenced unless I am in custody in which case I must register at the time of my release with the person designated by the agency that has me in custody and I must also register within 24 hours of my release with the sheriff of the county of the state of Washington where I will be residing, or if not residing in the state of Washington, where I am a student, where I am employed or where I carry on a vocation.~~ [Initialed]

~~If I leave this state following my sentencing or release from custody but later move back to Washington, I must register within 30 days after moving to this state or within 24 hours after doing so if I am under the jurisdiction of this state's Department of Corrections. If I leave this state following my sentencing or release from custody, but later, while not a resident of Washington, I become employed in Washington, carry out a vocation in Washington, or attend school in Washington, I must register within 30 after attending school in this state, or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if I am under the jurisdiction of the state's Department of Corrections.~~

~~If I change my residence within a county, I must send written notice of my change of residence to the sheriff within 72 hours of moving. If I change my residence to a new county within this state, I must send written notice of my change of~~

~~address at least fourteen days before moving to the county sheriff in the new county of residence. I must register with the sheriff of the new county within 24 hours of moving, and I must also give written notice of my change of address to the sheriff of the county where last registered within 10 days of moving. If I move out of Washington state, I must also send written notice within 10 days of moving to the new state or foreign country to the county sheriff with whom the person last registered in Washington state.~~

~~If I am a resident of Washington and I am admitted to a public or private institution of higher education, I shall, within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier, notify the sheriff of the county of my residence of my intent to attend the institution.~~

~~If I lack a fixed residence, I am required to register. Registration must occur within 24 hours of release in the county where I am being supervised if I do not have a residence at the time of my release from custody or within 14 days after ceasing to have a fixed residence. If I enter a different county and stay there for more than 24 hours, I will be required to register in the new county. I must also report in person to the sheriff of the county where I am registered on a weekly basis if I have been classified as a risk level II or III or on a monthly basis if I have been classified as a risk level I. The lack of a fixed residence is a factor that may be considered in determining a sex offender's risk level.~~ [Initialed]

(o) If this crime involves a sex offense or a violent offense, I will be required to provide a sample of my blood for purposes of DNA identification analysis.

(p) If this is a crime of domestic violence and if I, or the victim of the offense, has a minor child, the court may order me to participate in a domestic violence perpetrator program approved under RCW 26.50.150.

(q) ~~If this crime involves a sexual offense, prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (AIDS) virus.~~ [Initialed]

(r) ~~The judge may sentence me under the special drug offender sentencing alternative (DOSA) if I qualify under RCW 9.94A.120(6). This sentence could include a period of total confinement in a state facility for one-half of the midpoint of the standard range plus all of the conditions described in paragraph (e). During confinement, I will be required to undergo comprehensive substance abuse assessment and to participate in treatment. The judge will also impose community custody of at least one-half of the midpoint of the standard range that must include appropriate substance abuse treatment, a condition not to use illegal controlled substances, and requirement to submit to urinalysis or other testing to monitor that status. Additionally, the judge could prohibit me from using alcohol or controlled substances, require me to devote time to a specific employment or training, stay out of certain areas, pay thirty dollars per month to offset the cost of monitoring and require other conditions, including affirmative conditions.~~ [Initialed]

(s) ~~If the judge finds that I have a chemical dependency that has contributed to the offense, the judge may order me to may order me to participate to rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which I am pleading guilty.~~ [Initialed]

(t) ~~If this crime involves the manufacture, delivery, or possession with the intent to deliver methamphetamine or amphetamine, a mandatory methamphetamine clean-up fine of $3,000.00 will be assessed. RCW 69.50.401(a)(1)(ii).~~ [Initialed]

(u) ~~If this crime involves a motor vehicle, my driver's license or privilege to drive will be suspended or revoked. If I have a driver's license, I must now surrender it to the judge.~~ [Initialed]

(v) ~~If this crime involves the offense of vehicular homicide while under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502, committed on or after January 1, 1999, an additional two years shall be added to the presumptive sentence for vehicular homicide for each prior offense as defined in RCW 46.61.5055(8).~~ [Initialed]

(w) ~~The crime of has a mandatory minimum sentence of at least _ years of total confinement. The law does not allow any reduction of this sentence. This mandatory minimum sentence is not the same as the mandatory sentence of life imprisonment without the possibility of parole described in paragraph 6(k).~~ [Initialed]

(x) ~~I am being sentenced for two or more serious violent offenses arising from separate and distinct criminal conduct and the sentences imposed on counts and will run consecutively unless the judge finds substantial and compelling reasons to do otherwise.~~ [Initialed]

(y) I understand that the offense(s) I am pleading guilty to include a deadly weapon or firearm enhancement. Deadly weapon or firearm enhancements are mandatory, they must be served in total confinement and they must run consecutively to any other sentence and to any other deadly weapon or firearm enhancements.

(z) ~~I understand that the offenses I am pleading guilty to include both a conviction under RCW 9.41.040 for unlawful possession of a firearm in the first or second degree and one or more convictions for the felony crimes of theft of a firearm or possession of a stolen firearm. The sentences~~

~~imposed for these crimes shall be served consecutively to each other. A consecutive sentence will also be imposed for each firearm unlawfully possessed.~~ [Initialed]

(aa) This plea of guilty will result in the suspension of public assistance. RCW 74.08-290

7. I plead guilty to COUNT 1 of the Second Amended Information. I have received a copy of that information.

I plead guilty to COUNT 2 of the Second Amended Information. I have received a copy of that information.

8. I make this plea freely and voluntarily.

9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.

10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

11. The judge has asked me to state briefly in my own words what I did that makes me guilty of this crime(s). This is my statement:

> Alford plea accepted for benefit of bargain only understanding that should the case proceed to trial you could be convicted based upon police reports and witness testimony. [Initialed]

☑ Instead of making a statement, I agree that the court may review the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea.

Driver's License and Firearm Permit. The defendant advises the court as follows:

I ☐ have ☑ do not have a Washington State Driver's License.

If so: My license number is: _____
Present location of license is: _____

I ☐ have ☑ do not have a Washington State Identicard

If so: Present location of Identicard is: _____

I ☐ have ☑ do not have a permit to carry a firearm

If so: My permit number is: _____
Present location of permit is: _____

12. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs. I understand them all. I have been given a copy of "Statement of Defendant on Plea of Guilty." I have no further questions to ask of the judge.

/s/ _____

I have read and discussed this statement with the defendant and believe that the defendant is competent and fully understands the statement.

_____
John Knodell
WSBA #11284
(Deputy) Prosecuting Attorney

/s/ _____
Doug Phelps, WSBA #22620
Defendant's Lawyer

The foregoing statement was signed by the defendant in open court in the presence of the defendant's lawyer and the

undersigned judge. The, defendant asserted that (check appropriate box):

☑ (a) The defendant had previously read the entire statement above and that the defendant understood it in full; or

☐ (b) The defendant's lawyer had previously read to him or her the entire statement above and that the defendant understood it in full; or

☐ (c) An interpreter had previously read to the defendant the entire statement above and that the defendant understood it in full.

I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. Defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

Dated: July 18, 2000.

/s/
EVAN E. SPERLINE, JUDGE

SUPERIOR COURT OF WASHINGTON
FOR GRANT COUNTY

STATE OF WASHINGTON, Plaintiff, v. HOWARD RALPH BLAKELY, Defendant.	No. 98-1-00610-5 SECOND AMENDED INFORMATION

JOHN D. KNODELL, Prosecuting Attorney for Grant County, State of Washington, by this Second Amended Information accuses:

HOWARD RALPH BLAKELY

of the crime(s) of

COUNT 1: KIDNAPPING IN THE SECOND DEGREE, DOMESTIC VIOLENCE, RCW 9A.030(1), RCW 10.99.020 & RCW 9.94A.125 (CRIME CODE 00655)

COUNT 2: ASSAULT IN THE SECOND DEGREE, DOMESTIC VIOLENCE, RCW 9A.36.021(1)(c) & 10.99.020 (CRIME CODE 01035)

committed as follows:

COUNT 1: That the said HOWARD RALPH BLAKELY in the County of Grant, State of Washington, on or about October 26, 1998, did intentionally abduct Yolanda Blakely, a human being. The defendant being at said time armed with a deadly weapon, under provision of RCW 9.94A.125.

COUNTY 2: That the said HOWARD RALPH BLAKELY in the County of Grant, State of Washington, on or about October 26, 1998, did assault Ralphy Blakely, a human being, with a deadly weapon, to wit: a gun;

(Penalty: 10 years and/or $20,000 as to each count)

contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Washington.

DATED at Ephrata, Washington, July 18, 2000.

/s/
John Knodell, WSBA #11284
(Deputy) Prosecuting Attorney

701